

March 1, 2010

Committee on General Law  
House Bill 5221

An Act Concerning The Registration of Appraisal Management Companies

Senator Colapietro, Representative Shapiro and all distinguished members of the General Law Committee. I am Scott E.P. Kelland President of Kelland Capital Management, Inc. I appreciate the opportunity to comment and lend support to House Bill 5221, An Act Concerning The Registration of Appraisal Management Companies.

Appraisal Management Companies (AMC's) nationwide have had significant negative impact on the collateral risk evaluation process and have been defendants of several major national lawsuits. Many states have adopted regulation or are in the process of adopting laws to clearly identify what defines an AMC and exactly how AMC's may interact with Certified/Licensed appraisers that are individually regulated within the states. Stories of rampant abuse are well chronicled in law suits filed against Wells Fargo & RELS Valuation it's AMC affiliated company as well as the infamous case brought by New York Attorney General Andrew M. Cuomo, People of New York against First American Corporation & E-Appraiseit an AMC and its association with Washington Mutal. The Cuomo suit promptly resulted in the settlement by both Fannie Mae and Freddie Mac and resulted in the creation of the Home Valuation Code of Conduct (HVCC). The above mentioned complaints are a must read by any individual wishing to get a better understanding about AMC's and the conflicts and potential abuses they create. They are well written and easy to understand for the layman. Links for download are provided below:

New York, Cuomo:

[http://www.ag.ny.gov/media\\_center/2007/nov/EA%20Complaint.pdf](http://www.ag.ny.gov/media_center/2007/nov/EA%20Complaint.pdf)

Wells Fargo

<http://www.hbsslaw.com/files/Wells%20Fargo%20SComplaint1239756118659.pdf>

The advent of the HVCC has caused great confusion as it relates to the appraiser independence and the use of AMC's or third parties. Many believed incorrectly that banks and lending institutions had to use AMC's or third parties to engage an appraiser. Nothing could be further from the truth. The Federal Law is clear in federally related transactions as it relates to an "In House" appraiser being independent from lending, investment collection of funds, and not involved, except as an appraiser and have no direct or indirect interest financial or otherwise in a property. A fee appraiser may be engaged directly by regulated institution or its agent and also must maintain same independence. The key is to maintain separation between risk management

functions and loan production staff. Compliance for the appraisal function should report to an individual or department outside of loan production.

This does not hold true for mortgage brokers. FHA has a very clear statement: "FHA-approved lenders are prohibited from accepting appraisals prepared by FHA Roster appraisers who are selected, retained or compensated in any manner by a mortgage broker or any member of a lender's staff who is compensated on a commission basis tied to the successful completion of a loan."

When one starts a conversation and opens by saying "it's not about the money" it's always about the money. Follow the money and you will see who is behind any cause. In the case of AMC's it all about the money and a desire not disclose anything about how they are making money. AMC's typically require the appraiser not disclose actual compensation paid to appraiser, seek intentionally opaque policies concerning payments, all at the expense of the strictly regulated appraiser. More importantly AMC's are now basically the only player in a mortgage transaction who are not regulated and are deriving fees. FHA has handled this issue quite well in its Mortgage Letter 2009-28, Subject Appraiser Independence (link below).

HUD

<http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-28ml.pdf>

Excerpt from HUD Mortgage Letter 2009-28:

### **Appraisal and Appraisal Management Company (AMC)/Third Party Organization Fees**

FHA does not require the use of AMCs or other third party organizations for appraisal ordering, but recognizes that some lenders use AMCs and/or other third party organizations to help ensure appraiser independence. To address several questions that have already been raised regarding compensation, this mortgagee letter **corrects and expands** existing fee requirements set forth in Mortgage Letter 1997-46.

FHA-approved lenders must ensure that:

- FHA Appraisers are not prohibited by the lender, AMC or other third party from recording the fee the appraiser was paid for the performance of the appraisal in the appraisal report.
- FHA Roster appraisers are compensated at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.
- The fee for the actual completion of an FHA appraisal may not include a fee for management of the appraisal process or any activity other than the performance of the appraisal.
- Any management fees charged by an AMC or other third party must be for actual services related to ordering, processing or reviewing of appraisals performed for FHA financing.
- AMC and other third party fees must not exceed what is customary and reasonable for such services provided in the market area of the property being appraised.

As one continues to follow the money trail, it is easy to see why AMC's don't wish to disclose fees for their services or what is actually paid to appraiser. These actions have resulted in massive dilution in the appraisal quality as well as the number of appraisers in Connecticut. Appraisers with extensive experience are leaving in droves as a result of AMC's. I do not represent that appraisal quality should be affiliated with an associated fee or condone that any appraiser should do an inferior job as a result of lower than desired fee for any particular assignment. An appraiser is bound by USPAP, establishes an assignment based upon property individual uniqueness, complexity and agreed upon scope of work. An appraiser should quote an assignment based on estimated time and appropriate affiliated costs in bidding a specific assignment.

Reality is that the good appraisers know what the appropriate fee ranges are for standard assignments and refuse the low ball fees being offered by AMC's that just shop for the "Fast & Cheap" regardless of qualifications or geographic competency. Thus AMC's must extend search or get the desperate or unqualified appraisers to complete assignments. This is why you hear realtors throughout country complaining about AMC's sending inferior appraisers. Reiterating appraiser compliance with USPAP, there is no excuse for an appraiser accepting an assignment where one can't demonstrate competency. Again, "Follow The Money".

Fees that appraisers receive should be set by the market factors and directly negotiated directly with lender and appraiser based on scope of work, not by a third party or AMC. Fee schedules that appraiser have with AMC's that show fees affiliated for certain property types within a estimated value range are a violation of USPAP ethics standards regarding predetermined value.

The appraisal process starts with the initial phone call from a client wishing to engage an appraiser. The appraiser needs to conduct specific lines of questioning with regards to the nature of assignment in order to agree to the scope of work and price accordingly. The AMC "monkey in the middle" who orders the appraisal possesses limited to no knowledge on scope of work, just requests quotes, turn times and is lucky to speak the Kings English, definitely would be challenged to spell the word appraisal and clearly wouldn't be able to identify an appraisal if there life depended on it. Believe it or not the individual described above is the decision maker in assigning the job. One wonders why appraisal quality has suffered via AMC's. Again "Follow The Money".

A significant amount of hard work has been completed by several concerns with experienced competent individuals in attempt to cure the ills of AMC's. The fact that AMC's currently exist and have existed for some time, are part of a process with extensively regulated and licensed professionals, warrants regulation. I personally deem regulation for a needless entity known and identified as an AMC to be a "Satisficing Solution", a word defined as a willingness to settle for something less versus seeking "Maximization" or seeking best possible outcome. Banks and lending institutions may come to the conclusion they have been picking pennies up in front of steamrollers. It is abundantly clear the risk metrics employed by said institutions in past fifteen years have all been clearly wrong. Lending institutions have suffered unprecedented losses and will continue to do so if they don't get back to basics in evaluating collateral and pay very close attention to certified, qualified parties affiliated with valuations.

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Lending institutions hopefully will come to conclusion that should have allocated more resources to insure appraiser independence, engage directly proper certified experts qualified to communicate accurate values, eliminate unessential third parties (AMC's) in middle that dilute and or distort the valuation process. Institutions will see the true cost benefit analysis with regards to outsourcing and employing unessential third parties was significantly short sighted, resulted in significant loss and jeopardized the entire banking system while putting the entire economy in a massive recession.

If institutions come to the conclusions outlined above, AMC's will become extinct. But unfortunately as reported by our top Federal and Treasury Regulators, we attempt to build better mousetraps via regulation, but unfortunately we end up with smarter rats. Thus Bill 5221 needs to be implemented in some form. It should be noted that many specific details are not presented in this bill but are more extensively detailed in Connecticut S.B. 13, An Act Concerning The Registration of Appraisal Management Companies, presented to Committee on Insurance and Real Estate. Both Connecticut bills H.B. 5221 and S.B. 13 drafted have much of the exact same language contained in the North Carolina Bill Senate Bill 829V3- AN ACT TO REGULATE REAL ESTATE APPRAISAL MANAGEMENT COMPANIES. The NC Bill has significantly superior language, is less intentionally vague and covers many key features that will reduce AMC abuse and fraud, will be easier to regulate and enforce. The link for download is provided below.

<http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/HTML/S829v3.html>

Thank you for you time and consideration. I would be happy to answer any questions or provider further clarification.

Sincerely,

Scott E. P. Kelland  
President /CEO